

ineffective, are therefore essential to enforcing the Act's requirement that ILECs provide service to CLECs on reasonable, nondiscriminatory terms.

In short, the Commission's inaction on the competitively critical issue of performance standards and remedies means that the ILECs will be able to prevent local competition from succeeding. The ILECs are acutely aware that when balanced only against the uncertain prospect of delayed litigation with uncertain remedies, selective discrimination against key CLEC offerings and initiatives will halt the prospect of local competition before it gets started. Without clearly defined standards and stringent self-executing remedies governing ILEC performance, the Commission's considerable efforts and hard work on developing reporting requirements is "meaningless."^{11/}

Indeed, it is so clear that reporting alone is insufficient to satisfy the Act that even Bell Atlantic and SBC are forced to concede the need for performance standards:

Where there are processes or services for CLECs that have no retail analog, the parties should negotiate a reasonable standard that provides the CLEC with a "meaningful opportunity to compete," not try to invent non-existent functions and measures.

Bell Atlantic Comments at 8. SBC also concedes the need for objective performance standards for functions that have no retail analog. SBC Comments at 31. Tellingly, however, neither Bell Atlantic nor SBC -- nor any other commenter -- cites a single agreement containing even minimally adequate objective performance standards for functions the ILECs claim have no retail analog.

^{11/} The Commission's inaction is particularly troubling in light of its stated agreement with the principle that "without enforcement mechanisms, reporting requirements are 'meaningless.'" In re: NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries, FCC 97-286 ¶ 208 (rel. Aug. 14, 1997) (quoting brief of TCG Corp.).

The solution to this gaping hole in the implementation of the Act is for the Commission to establish minimum performance standards that allow CLECs a “meaningful opportunity to compete.” If the Commission is unwilling to do so, it should, at a minimum, establish guidelines for effective performance standards and self-executing remedies, as MCI noted in its Opening Comments. Finally, having correctly acknowledged the importance of performance standards and remedies to prevent backsliding by BOCs following 271 entry, the Commission must stand by its consistent statements on the importance of standards, and the ILECs’ acknowledgment of the need for standards, by denying section 271 applications unless adequate performance standards and remedies are in place.

III. THE ILECS’ OBJECTIONS TO PARTICULAR MEASUREMENTS OR REPORTING REQUIREMENTS ARE WITHOUT MERIT

Although nearly every measurement the Commission proposed was accepted by at least one ILEC,^{12/} the ILECs took issue with a number of details of particular measurements or reporting requirements. MCI believes that for the vast majority of measurements, the LCUG document attached as Exhibit A to MCI’s Initial Comments fully explains the reasons for the requisite measurement methodology and level of disaggregation and MCI therefore does not respond in these reply comments to each objection. Instead, MCI responds below to some of the recurring themes in the ILECs’ comments that merit additional discussion, with an emphasis on the comments of Ameritech, which presented the most voluminous discussion of individual measurements.

^{12/} Attached as exhibit A is a table MCI prepared showing which of the proposed measurements were supported, in full or in part, by at least one ILEC.

A. General Comments Affecting Multiple Measurements

1. The ILECs' Unsubstantiated Claims of Burden and Development Costs Should Be Disregarded

Several ILECs complain about the supposed burden of producing performance reports, pulling out of thin air wildly inflated and unsubstantiated assertions of development costs. No supporting detail or affidavit support is included to back up these figures, which are particularly suspect in light of Ameritech's admission that it already employs extensive performance-reporting systems for its retail services. Ameritech Comments at 16 (referring to \$20 million pre-existing reporting system). Moreover, the little detail the ILECs include in their legal briefs is belied by other statements of record. Thus, while Ameritech claims it will have to hire experts, including "at least one full time statistician," Ameritech Comments at 16, Ameritech's would-be merger partner SBC candidly recognizes that use of "simple" statistical tests such as the "z test" proposed by MCI will *not* require CLECs to retain specialists to read and interpret the results. SBC Comments at 25. If CLECs will not have to retain specialists or statisticians to interpret the results of the statistical tests SBC concedes are simple, it follows that the ILECs will not need such specialists.

Similarly, Ameritech's counsel speculate that modification of provisioning systems for reporting time of completions would cost over *\$16 million*, or 8 times the cost of all the rest of its wholesale reporting combined. Ameritech Comments at 31. These and similar inflated and completely unsubstantiated figures should be disregarded, particularly in light of the comments of Sprint Corporation, an ILEC in multiple states. As Sprint noted in its comments, its extensive presence as an ILEC means that it has every interest in not supporting overly burdensome reporting requirements. Sprint Comments at 2. The Commission should therefore place great

weight on Sprint's conclusion that the reporting requirements supported in its comments are "capable of prompt and inexpensive implementation by the ILEC industry" and should be promulgated as binding rules. *Id.* at 3.

Moreover, the complaint of some ILECs that reporting at levels below the state-wide level would be impossibly burdensome ring hollow in light of SBC's and Sprint's *support* for reporting at a smaller level than state-wide for all processes managed at a level smaller than state-wide. SBC Comments at 3; Sprint Comments at 7. Only this sub-state level reporting, SBC concedes, will "permit evaluation of the variances that may occur due to regional uniqueness." SBC Comments at 3. And, as Sprint notes, ILECs already keep data in geographic units smaller than a state. Sprint Comments at 7.

Perhaps even more significant, the Commission should consider ILECs' claims of burden in reporting at the sub-state level, and in reporting disaggregated results more generally, in light of what Bell Atlantic and SBC have already *agreed to report*. Although Bell Atlantic continues to fail to produce fully compliant reports, it has agreed to produce sub-state level reporting as part of the New York PSC Service Quality Measurement Proceeding.^{13/}

Similarly, any complaints by ILECs about having to produce on a monthly basis are contradicted by SBC's concession that it is already producing monthly reports, SBC Comments at 23, as is Bell Atlantic. Indeed, Ameritech admits that once data is being collected and reported, running the reports on a monthly basis creates *no* extra burden. Ameritech Comments at 85.

13/ See Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Case 97-C-0139, Order Approving Interim Guidelines for Carrier-to-Carrier Performance Standards and Reports (March 16, 1998) (attached as Exh. C).

In sum, the Commission should disregard any ILEC claims of burden that are not fully supported in the record, including a full explanation of the ILEC's pre-existing reporting and data-gathering capabilities, and specific cost justification. The ILECs have consistently refused to produce such information when MCI has asked for it in the context of negotiations or separate state proceedings relating to performance measures. The ILECs should not be heard to raise any objections based on the alleged burden of reporting data when they have steadfastly resisted producing complete information on the data collection and generating capabilities they already have.

**2. Audit Rights and the Provision of Raw Data Underlying Reports
Cannot Be Conditioned On CLECs Having to Show Cause**

Ameritech makes the remarkable claim that a CLEC should not be entitled to the raw data showing that an ILEC reported false results, or to audit rights, unless and until the CLEC has reason to believe data was falsely reported. Ameritech Comments at 86. This circular logic would prevent CLECs from ever obtaining the underlying data or audit rights. Particularly in the case of an ILEC's performance to its own affiliates or end users, a CLEC will never know if the ILEC has falsified data or even innocently reported its retail service inaccurately, until the CLEC has performed an audit or examined the underlying data. In short, there is no way for a CLEC to make the showing Ameritech demands to obtain raw data or audits without first seeing the raw data or conducting the audit. MCI is not opposed to reasonable limitations on the frequency of audits, but in light of the ample ways data can be manipulated, and an ILEC's undisputed incentive to report that it is providing parity, raw data must be furnished routinely and unconditionally, and audits cannot be conditioned on a showing of need.

Notably, BellSouth does not object to producing raw data routinely as part of its “data warehouse.” At present, however, access to that warehouse has been grossly limited. BellSouth has simply performed a “data dump” in an unusable format. MCI cannot confirm which orders were processed, much less for which state, which product, or which order type. These problems, while severe, do not undermine the significance of the fact that BellSouth does not oppose providing raw data on a regular basis.

3. An ILEC’s Performance to a CLEC Must Be Compared to an ILEC’s Actual Performance to Its Affiliates and Customers and to Objective Standards, Not to Simulated Performance Levels or to Service CLECs Provide to ILECs

Ameritech further argues that in lieu of comparing its performance to CLECs against Ameritech’s actual performance to itself (its affiliates and end users), for some measurements it should only be required to simulate the quality of service it provides to itself. Ameritech Comments at 24. The Act, however, requires that an ILEC not discriminate in favor of itself against a CLEC. To determine if that requirement has been satisfied requires examining the ILEC’s *actual* performance to its own customers and affiliates, not a laboratory simulation of how the ILEC in theory provides service to itself. MCI does not object to an ILEC using proper sampling techniques if the sampling covers the ILEC’s actual business operations over time, accounts for changes in volumes and systems, and is otherwise a proper sample, but a system that guesses at how systems and ILEC personnel respond is facially inadequate.

Ameritech also contends that in some cases its performance to CLECs should be compared only to CLECs’ performance to Ameritech in the case of a “win-back.” *See, e.g.*, Ameritech Comments at 47-48. That proposal is illogical and is inconsistent with the requirements of the Act. The Act requires ILECs to deliver service to CLECs on reasonable and

nondiscriminatory terms. This means, among other things, that an ILEC cannot favor its own affiliates or customers over a competitor. Thus, in order to give meaning to the nondiscrimination requirement, the ILEC's performance to CLECs must be compared to the ILEC's performance to its own affiliates or customers, wherever a retail analog exists. A CLEC's performance to an ILEC is simply irrelevant.

Where there is no retail analog, an ILEC's performance must be sufficient to give a CLEC a meaningful opportunity to compete, as both Bell Atlantic and SBC acknowledge.^{14/} Determining what level of service is needed from an incumbent with 95% or higher market share in order to give a new entrant with little or no market share a "meaningful opportunity to compete" is completely unrelated to the level of service the incumbent monopolist needs from a fledgling entrant who does not enjoy bottleneck control over distribution facilities. That is why the Act focuses on regulating the incumbents who control the market for supplies in local exchange service, not the new entrants who have no market presence or ability to impede competition in local markets.

4. ILECs Must Separately Report Performance to Their Affiliates

It is difficult to conceive of any justification for failing to include an explicit requirement that ILECs not only report the level of service they provide to end users, but also to their own affiliates. An ILEC's performance to its affiliate is perhaps even more analogous, for purposes of detecting and preventing discrimination, than an ILEC's performance to end users. No one would seriously argue that reporting of an ILEC's performance to its own affiliate is anything

^{14/} In addition to the numerous comments of ILECs in this proceeding arguing that many functions have no retail analog, PacBell and GTE have recently submitted to the California PUC a list of functions for which they claim there is no retail analog. See Exhs. D and E hereto. Yet the ILECs do not cite to objective performance standards in place for each of these functions.

short of essential. Nevertheless, Ameritech argues that such reporting is not necessary *under present circumstances in the Ameritech region* because Ameritech has no affiliates offering local exchange service. Ameritech Comments at 19. The simple answer to this concern is that an ILEC that has no affiliates providing local exchange service need not file non-existent data. But it is obviously critical that such reporting requirements be put in place now in order to cover any ILEC that today, or in the future, uses an affiliate to provide local exchange service.^{15/} The Commission must therefore specify in its final rules that reporting requirements pertaining to an ILEC's retail services include disaggregated reports on the level of service the ILEC provides to any affiliates that offer local exchange service.

5. ILECs Must Report Performance to Each CLEC Separately to That CLEC

SBC argues that where processes are the same for all CLECs, performance results should be reported on a CLEC-aggregate basis. SBC Comments at 22-23. This argument completely ignores the ability and incentive of ILECs to discriminate against particular CLECs that pose the most threat, or to discriminate against CLECs based on the mode of service delivery they choose. If, for example, MCI is the leading threat to an ILEC's market power in a given state, the ILEC would have every incentive to degrade service to MCI at the same time it provides improved service to less threatening CLECs in order to create a misleading record of compliance in the aggregate. Because the ability and incentive of an ILEC to selectively discriminate against a particular CLEC is not subject to serious debate, ILECs must be required to report to each CLEC

^{15/} This is not merely hypothetical. In fact, BellSouth and SNET both currently have affiliates offering local phone service.

its performance to that CLEC against retail performance and performance to other CLECs in the aggregate.^{16/}

6. The ILECs' Argument That Reports of Poor Performance Can Sometimes Be Explained Does Not Justify Excusing Reporting Requirements

The ILECs repeatedly argue that certain data should not even be *collected* or *reported* because in some instances they will be able to offer an explanation for apparently discriminatory service. See, e.g., Ameritech Comments at 19 (opposing "small area" reporting on the ground that it would "reduce the statistical reliability of the various measures, and increase the number of false positives"); *id.* at 47 (opposing measurement of average submissions per order because resubmissions may be caused by inaccurate orders submitted by competing carriers). The short answer to these arguments is that it would be absurd to conclude that *no data should be collected or reported* on a particular measurement simply because an ILEC claims that it may be able to explain it was not at fault for reported discrimination.

Thus, for example, Ameritech opposes reporting average submissions per order because resubmissions might be caused by CLEC errors. Ameritech Comments at 47-48. As the Commission has already found, however, a high rate of rejects can be caused not only by obvious ILEC system errors, but also by more subtle ILEC problems such as an ILEC's failure to provide adequate instructions and documentation to CLECs. South Carolina 271 Order ¶ 10. Reports of average submissions per order are very useful diagnostic measures that can be used to identify the reasons for rejected orders. Absent reports on average submissions per order, ILECs will

^{16/} A failure to report CLEC-specific data is also completely at odds with the position of some ILECs that data showing a lack of parity should result only in a "root cause" analysis and joint ILEC-CLEC effort to resolve the problem, rather than any remedies. A "root cause" analysis or any other diagnostic measure to determine why a particular CLEC is receiving degraded service is impossible without CLEC-specific data.

continue to blame CLECs for rejects without having any incentive to explain the causes of order errors. See id. ¶ 108 (Commission finding that BellSouth attributed errors to CLECs without explaining the cause of the errors).

Similarly, Bell Atlantic opposes sending reports to a central clearinghouse because data may not “necessarily” be comparable from state to state. Bell Atlantic Comments at 5. But Bell Atlantic does not even attempt to explain why the clearinghouse would not be useful for the vast majority of data that *are* comparable from state to state. Indeed, that is one of the core purposes of rules concerning measurements and reporting -- to use a consistent methodology for factors such as “start times,” “stop times,” and disaggregation so that data can be compared from state to state. It is undisputed that the measurements in the NPRM will be comparable from state to state if the ILECs comply with the performance requirements.

Moreover, the mere *existence* of a repository that may contain some information not comparable from state to state is hardly a reason to discard altogether the use of a clearinghouse. Once again, Bell Atlantic fails to understand that the clearinghouse is not akin to a finding of discrimination -- Bell Atlantic remains free to advocate what conclusions can and cannot be drawn from the raw data.

7. Reporting Manual Processes Is Imperative Because Discrimination is Most Likely When ILEC Human Intervention Is Involved

Having argued that discrimination is impossible where identical electronic processes are used for CLECs and ILECs, and therefore that reporting is unnecessary, e.g., SBC Comments at 5, the ILECs then brazenly argue that reporting should not be required where electronic processes are *not* used. See, e.g., SBC Comments at 5, 9; Ameritech Comments at 45. SBC, for example, makes the astonishing argument that pre-ordering data involving an order of less than fifteen

lines should not be reported because it *is* automated, and that data involving more than 15 lines should not be reported because it is *not* automated. SBC Comments at 5.

These arguments are specious. The danger of discrimination is present whether ILECs use automated or manual processes, but in many cases is greatest when the ILEC uses manual processes. There is no dispute that ILECs and their employees have the incentive to discriminate against competitors, nor any dispute that an ILEC manually handling a transaction has the ability to discriminate against competitors. To except reporting requirements when the danger of discrimination is greatest would nullify the Commission's stated intent to prevent discrimination through performance reporting.

**8. ILECs Must Separately Report Their Performance In
Providing Combinations of Unbundled Elements to CLECs**

Ameritech argues that because of Eighth Circuit precedent, it is not required to provide combinations of elements to CLECs and therefore should not be required to report on the quality of provision of combined elements. Ameritech Comments at 29. Obviously neither Ameritech nor any other ILEC has to report nonexistent data. However, Ameritech's argument ignores the fact that a number of ILECs are providing combinations of elements to CLECs, either voluntarily or by order of state commissions (based, for example, on state law or binding agreements already in effect). Regulators and CLECs are plainly entitled to reports on the quality and timeliness of provision of combined elements where they are being provided. In addition, it is important for the Commission to ensure that reporting requirements are in place today to govern provision of combinations of elements in the future (which ILECs may furnish voluntarily or based on subsequent commission or court rulings). Once again, ILECs will be free to advocate whatever

conclusion they wish from the data, but there is no reason whatever to shield the data from disclosure where combinations of elements are being provided.

B. Measurement-Specific Comments

1. It is Critical to Measure the Timeliness of Jeopardy Notifications

Perhaps because they know that missing a service appointment without notifying the customer will cause a CLEC to lose its reputation before local competition gets off the ground, several ILECs vociferously oppose having to report untimely jeopardy notifications. See, e.g., SBC Comments at 10; Ameritech Comments at 17, 41. The ILECs' arguments, however, are not only without merit, they are internally inconsistent and inconsistent with each other. Thus, for example, Ameritech claims that jeopardy notices are not used by their retail representatives. Ameritech Comments at 17. Yet Ameritech's would-be merger partner, SBC, concedes that it does use jeopardy notices for its retail customers. SBC Comments at 10 (noting only that the retail jeopardy notification process is not "formalized"). SBC's admission should not be surprising -- it is utterly implausible that ILECs do not notify their customers when an appointment is going to be missed.

Perhaps recognizing how implausible it is to believe that there is no retail analog for this measurement, Ameritech cleverly chooses its words, arguing that its own notices are not used by its *retail sales representatives*, but are used by network personnel to identify, resolve and eliminate potential due date issues before the sales representatives even need to know about them. Ameritech Comments at 17-18. Thus, Ameritech argues, jeopardy reports to CLECs would result in "false alarms" should network issues be resolved in time. Id.

Ameritech's paternalistic concern that CLECs not create "false alarms" to their would-be customers proves too much. CLECs are entitled to the *same information* Ameritech has, regardless which Ameritech personnel are given the information. And CLECs are entitled to that information at the *same time* Ameritech has the information so that the *CLEC*, not Ameritech, can make the judgment whether the problem is serious enough to merit calling the customer. As Ameritech recognizes through its own practice of deciding when a problem is serious enough to warrant calling the customer, quality customer service practices require setting customers' expectations that a due date *may be* postponed.

Indeed, Ameritech concedes that it does report jeopardies unresolved within 24 hours of the due date. *Id.* If Ameritech were to learn of a jeopardy 22 hours before a due date, it would obviously be discriminatory if it did not tell the CLEC of the problem until 5 minutes before the due date (or, as MCI has too often experienced, if Ameritech never told the CLEC of the problem at all). Thus, SBC's argument that measuring jeopardy notices is not even "useful" is patently absurd. SBC Comments at 10. A customer willing to try a new carrier will quickly return to the incumbent if the new carrier fails to show up for an appointment without even calling to postpone, or calls on such short notice that the customer cannot coordinate the schedules of its employees or other vendors needed for the service. ILECs must therefore report, at a minimum, when their network personnel receive the "early warning" of an issue that will potentially cause a missed due date, in order to allow CLECs and regulators to determine if parity is being provided.

2. Provisioning and Quality of Interconnection Trunks Must be Measured and Reported

Perhaps the only common thread in Ameritech's comments is that it objects to reporting its performance for the functions CLECs are most dependent upon. That is the only way to

explain Ameritech's effort to exclude the provision of interconnection trunks from its reporting requirements. Ameritech Comments at 34, 58. Delayed interconnection trunks has easily been one of the most prevalent reasons MCI has been forced to provide service to new customers at long intervals -- far longer than customers are used to from the ILECs. Ameritech's argument that the interconnection process is negotiated, and therefore should not be reported, is the height of hypocrisy. *MCI has been given firm order commitment dates of one year to 18 months for augmenting inbound trunks*, and has been held hostage by slow ILEC provisioning of DS3 toll interconnect trunks, and slow provisioning of DS1s and DS3s needed for the launch of new switches. Typically, ILECs drag out the negotiation and provisioning process by requiring MCI's utilization rates to be higher -- thus preventing MCI from competing on equal terms by arguing that MCI is not competing effectively enough.

The reality, which the ILECs fail to describe, is that they have refused to agree in interconnection agreements to intervals for interconnection trunks, so they *force* MCI and other CLECs to negotiate intervals on an ad hoc basis. They cannot then be heard to argue that the existence of this ad hoc process, which already works to the disadvantage of CLECs, somehow excuses the ILECs from reporting the timeliness of interconnection trunk provisioning -- provisioning which by itself holds up the entire process of local service delivery.

SBC objects to another measure relating to trunks -- out of service > 24 hours -- on the ground that facilities are supposedly always restored in a matter of hours, and that the fact that a trunk is out does not mean the trunk group is out. SBC Comments at 7. This argument is without merit. First, if SBC is correct that trunks are rarely out of service for more than 24 hours, it will have little or nothing to report. If, however, some trunks are out of service for more

than 24 hours, SBC's argument that such a problem never occurs simply magnifies the importance of reporting the frequency with which the problem occurs for CLECs. Second, it is critical for CLECs to see the number of trunks out -- not just trunk groups -- because CLECs do not have the diversity of routing ILECs enjoy.

3. The Quality and Timeliness of Functions Relating to 911 Service Must Be Measured

Ameritech's argument that 911 issues such as database accuracy can be left to local authorities, see Ameritech Comments at 49, confuses the issues of reporting, on the one hand, and enforcement, on the other, ignores functions that remain solely in Ameritech's control, and ignores Ameritech's own history concerning 911 service.

First, Ameritech fails to recognize that the very purpose of the reporting guidelines is to establish consistent measurement methodologies and reporting nationwide. This consistency in reporting is critical to allow for benchmarking, regardless which authority ultimately enforces performance requirements.

Second, while MCI agrees that where a CLEC has flow-through electronically to update the 911 database, the ILEC would not be responsible for *that* function, the ILEC is responsible when it updates the data for the CLEC and is responsible if there are errors in the Master Street Address Guide ("MSAG") data. In that situation, ILEC errors translate directly to serious problems of health and safety, such as emergency service personnel being given the wrong address for a 911 call from a CLEC customer. ILECs, not CLECs, have been responsible not only for database errors that prevent emergency workers from learning the address of a caller, but also for 911-related errors as diverse as failing to update NXX's for appropriate tandem routing to public safety answering points ("PSAPs"), and changing routing or taking down cross-

connects without notification to CLECs. *Measurements to capture parity in accuracy of NXX loading and notice of routing or network changes involving 911 are equally critical to ensure that emergency services are provided reliably.*

Finally, it is particularly ironic that Ameritech should seek to excuse its obligations to report its performance relating to 911 service given its past misconduct. In response to a complaint by the City of Southfield against Ameritech concerning errors in Ameritech's 911-related databases for CLEC customers, Ameritech, as here, attempted to shift blame. The Michigan Public Service Commission concluded that there was a "serious" database problem that Ameritech Michigan was responsible for but had failed to resolve for two years. Order of Sept. 30, 1997, In re: City of Southfield v. Ameritech Michigan (Michigan PSC No. U-11229).^{17/} Indeed, as a result of the Ameritech-caused problem, Ameritech was ordered to collect information on database accuracy, *id.* at 13, demonstrating that Ameritech already has the data it is now objecting to collecting and reporting under the NPRM guidelines.

4. Supplemental Orders Should Not Be Excluded From Measurements of Average Completion Intervals or Percentage of Missed Due Dates

SBC argues that CLEC supplements should be excluded from intervals for average completions and percentage of missed due dates. SBC Comments at 8. It is of course true that a CLEC supplement should not be included in the original interval, but SBC fails to note that it is equally important to measure and report the *new* interval on the new order -- an interval that begins upon the receipt of a syntactically correct order. In computing the applicable intervals for the supplement, the new FOC date, not the prior FOC date, must be used. The reason for this

^{17/} Available at <http://ermisweb.cis.state.mi.us/mpsc/orders/comm/comm97.htm> (Order U-11229).

should be clear -- an ILEC is no more entitled to discriminate against a CLEC on a supplemental order than it is on an original order.

5. ILECs Must Report Data on Coordinated Cutovers

As the Commission is aware from MCI's comments in section 271 proceedings and ex parte presentations updating the Commission on the state of BOCs' compliance with section 271, the BOCs' failure to coordinate cutovers continues to plague MCI and its customers, resulting in extended loss of dial tone and, in turn, MCI's goodwill. Coordinated cutovers therefore remains one of the most important issues impacting customer service quality and the BOCs' failure to provide reasonable, nondiscriminatory service. In order to best track this problem, MCI recommends modifying the Commission's proposal in order to require reporting on *the Percent of Unscheduled Service Disruptions*, separately reported for interim local number portability ("ILNP") and permanent local number portability ("PNP"). In addition, for obvious reasons it is important to know not only the frequency of unscheduled disruptions, but also their duration. For this reason, the Commission should also require reporting the *Percent of Unscheduled Service Disruptions in Coordinated Cutovers Restored Within 1 Hour*, again separately for ILNP and PNP.

6. ILECs Must Report Provisioning Accuracy

Some of the ILECs oppose reporting the percentage of accurate orders, and instead propose measuring only the percentage of troubles in 30 days. The latter report is clearly inadequate standing alone, however, because it will only capture customers who received incorrect service *and who called to report the problem*. The percent trouble report will not, for example, capture customers who did not complain, such as those who switched carriers because

of frustration with order accuracy. Because ILECs can control whether a CLEC is able to provision an accurate order to its customer, it is critical that provisioning accuracy be closely monitored and provided at parity. Indeed, even SBC supports this measurement. SBC Comments at 11.

7. ILECs Should Disaggregate Reports Concerning Field Dispatches From Those Concerning Central Office Dispatches

Ameritech argues that reports should be disaggregated by field dispatches vs. non-field dispatches, as opposed to dispatch vs. non-dispatch as proposed in the NPRM. Ameritech Comments at 32. The apparent basis for this argument is that central office dispatches are supposedly more akin to a non-dispatch. At this time, however, there is no evidence that this is true. Because Ameritech's systems already separately capture field dispatches, on the one hand, and central dispatches, on the other, the ILECs should produce that level of detail. If sufficient data are later compiled showing that intervals for non-dispatch problems are akin to intervals for central office dispatches, MCI would not object to later aggregation of these reports.

IV. THE COMMISSION SHOULD ADOPT THE STATISTICAL TESTS FOR LOCAL PARITY PROPOSED BY LCUG

MCI submitted with its initial comments LCUG's proposed statistical tests for local service parity, a comprehensive and easily administered methodology for determining if the ILECs are providing parity. The "z test" proposed by MCI and LCUG, which is widely accepted in the field, tests a null hypothesis (ILEC is providing parity) against an alternative hypothesis (ILEC is providing inferior service). The z test compares the difference between two like means (e.g., mean time to restore), proportions (e.g., percent order accuracy) or rates (e.g., trouble rate) on the scale of the standard normal distribution.

The null hypotheses (parity) is rejected only if the magnitude of any difference in treatment is unlikely to have occurred by chance.^{18/} That determination is made, in the case of a difference in means, by computing the "standard error" of the difference between the means using an estimate of the population variance. The estimate of the population variance is based on the ILEC's variance in its retail performance. The standard error of the difference is the likely size of chance variation in the difference calculation, assuming the means come from distributions that are at parity. A "z value" is the difference between the two means divided by an estimate of the standard error for the difference. The z value is then compared to a "critical value" ("c") which is set to ensure a suitably small risk of a "type I error" -- .05 -- (a probability that the test will determine disparity when parity may be present).

None of the parties that submitted comments on statistical issues raised a valid concern with the LCUG "z test" methodology. To the contrary, a number of parties supported use of the basic z test methodology, including ILECs such as SBC, Ameritech, and U S West. Notably, SBC admitted that the z test is "simple" to administer and would not require expert statisticians to read and interpret the results. See SBC Comments at 25.

MCI believes that the LCUG document fully explains the basis for the z test that LCUG and MCI propose. MCI therefore comments below only on limited issues that the Commission and other parties have raised concerning statistical tests of parity.

^{18/} The test is "one tailed" -- i.e., it tests whether CLECs received inferior service, and does not also test whether an ILEC may be providing superior service to CLECs. A one-tailed test is appropriate because the purpose of the Act is to ensure that incumbent LECs, who control the distribution facilities CLECs require, at the same time they are competing against CLECs, do not act on their incentive to discriminate against their competitors. The nondiscrimination provisions of section 251 thus concern whether CLECs are receiving inferior service, not whether they are receiving superior service.

A. Performance Reports That Show a Lack of Parity After Application of the LCUG Statistical Model Conclusively Establish Discrimination in Violation of the Act

The Commission suggests in the NPRM that statistically significant differences between an ILEC's performance to itself and an ILEC's performance to CLECs "may be too small to have any practical competitive consequence and may not justify a legal conclusion that the incumbent ILEC has discriminated against the competing carrier." NPRM Appendix B at B3-B4 (footnote omitted). Several commenters also suggest that even a statistically significant report showing a lack of parity does not mean that discrimination has occurred. *See, e.g.,* Ameritech Comments at 92-93; SBC Comments at 26; U S West Comments at 35. MCI disagrees. There are two core reasons why a statistically significant showing of non-parity must be equated with a finding of discrimination in violation of the Act:

First, the Act requires ILECs to provide unbundled elements, resale, and interconnection on "nondiscriminatory" terms and conditions, without any qualifications or conditions. If there is statistically significant data showing that ILECs provided service to their own affiliates or customers of a higher quality or on a more timely basis than they did for CLECs, requiring a CLEC to make an additional showing of a particular level of harm to its operations in order to demonstrate discrimination would violate the unambiguous language in the Act and create exceptions Congress did not include in section 251 of the Act. Compare 47 U.S.C. § 202 (prohibiting "unreasonable" discrimination).

Second, such a test would be impossible to administer in practice. Consider a scenario that has been held out by ILECs as an example of the need to prove "practical significance" beyond statistical significance: Suppose there were statistically significant data (assuming a

proper sample size, etc.) showing that an ILEC provided firm order confirmations to itself on an average of 2 seconds, and to a CLEC on an average of 5 seconds. Who is to judge, and how could one possibly judge, whether that constituted “enough” harm to the CLEC? CLEC customers and CLEC customer service agents would be waiting longer than ILEC customers and ILEC customer service agents, and one could not possibly measure whether a 3 or 5 or 10 or 20 second difference is the breaking point for “sufficient harm” to the CLEC. In addition to the effect on a would-be customer already on line with an agent, how would one measure the “practical competitive” impact on the prospective customers who must now wait longer before reaching an agent? In a call center where CLEC agents are handling thousands of calls, what is the cumulative competitive effect of increasing by 5 seconds the length of every call, and therefore, the time that potential customers are in the queue waiting to speak to a customer service agent? Many would-be customers will hang up rather than continue waiting for an agent to be available.

Would the state commissions or parties be required to conduct a survey of all customers on hold, and all CLEC service agents, to see if they were frustrated by being forced to wait for X seconds when the wait could have been Y seconds (if parity had been provided)? Will additional effort be required to track down those who abandoned the queue (and with it, MCI as a local service provider) to find out if one or two additional minutes on hold made a difference? The notion of additional surveys (and, of course, statistical sampling techniques for those surveys) in order to show whether disparity caused “enough” harm is preposterous and unworkable. It is perhaps for this reason that nothing in the Act requires a CLEC to make a showing of “sufficient practical harm” or any similar showing in addition to a showing of discrimination.

MCI believes that the utility of performance requirements has already been weakened enough by the ILECs' refusal to agree to objective performance standards (not tied to parity) and self-executing remedies, and by the absence of binding rules in these areas. The creation of an additional gaping loophole -- that a statistically significant showing of disparity would only be the beginning of a further endless and open-ended analysis -- would completely cripple the already limited usefulness of nonbinding performance reporting guidelines.

B. The LCUG Z-Test Accounts for Differences in Sample Size

Although some questions have been raised concerning the effect of comparing ILEC retail data to smaller CLEC samples (because of the limited volume of CLEC business when competition is in its incipency), the LCUG model fully accounts for differences in sample size. The LCUG model is premised on the assumption that as a general matter, the "central limit theorem" will be satisfied -- i.e., as a rule of thumb, the samples will involve 30 observations or more. There is no serious dispute that the z test is appropriate under these circumstances. In the rare event when there are less than 30 observations, MCI does not oppose an ILEC's use of more complex statistical analyses in an attempt to prove that parity is present notwithstanding the results of a z test (provided that CLECs are equally entitled to use other models for samples below 30 to establish that disparity is present notwithstanding a report of parity using the z test).

However, the Commission should fashion its rules around the typical case, not the exceptional one. Accordingly, the Commission should adopt the well accepted z test as the methodology for determining parity, with an exception allowing parties to use other tests only for sample sizes below 30. The burden of establishing the validity of any model other than the z test for samples less than 30 must rest on the party using the model.

C. It is Essential That the Commission Require an Equal Level of Disaggregation for ILEC Retail Performance and ILEC Wholesale Performance, and that the Commission Identify Which Wholesale Functions Have No Retail Analog

No party disputes the fundamental principle that the z test or any other similar statistical model requires “apples to apples” comparisons. No statistical test proposed by the commenting parties will produce valid results if, for example, data on an ILEC’s provision of resold residence POTS lines to CLECs were compared to aggregated data of an ILEC’s provision to its own affiliate or customers of residential POTS lines, business ISDN lines, and unbundled switching. Although this principle is not controversial, it is not entirely clear from the NPRM whether the Commission intends to specify that the same level of disaggregation it requires of ILEC performance to CLECs be used for reporting ILECs’ retail performance. Unless this requirement is made explicit, parity determinations will be impossible to make.

This requirement will have the further benefit of requiring ILECs to identify specifically which wholesale functions they claim have no retail analogs (such that equal disaggregation is not possible). Once the ILECs have presented their position on retail analogs, and the Commission has determined the validity of the ILECs’ arguments concerning retail analogs, it will further be clear that the ILECs have utterly failed to agree to objective standards for the multitude of functions for which they claim there is no retail analog.

D. The Standard Error Calculation Must Be Based Only on ILEC Variance

There is some dispute in the comments as to whether standard error should be calculated using the ILEC variance, "separate" variance,^{19/} or "pooled" variance.^{20/} Neither of these traditional approaches to comparing two samples is ideal for the statistical parity tests performed here. The most appropriate formula for calculating the standard error of the difference would use the ILEC variance alone, as described in Attachment C to MCI's Initial Comments.

The separate variance formula is based on the assumption that variances may be unequal. When the null hypothesis of parity is being satisfied, we have every reason to believe that variances should be the same for both the ILEC and the CLEC. Because of this, the standard error for the difference between the ILEC and CLEC measures should be based on the assumption that variances are the same.

The pooled variance formula correctly assumes that variances should be the same when parity is provided, but incorrectly maintains that assumption even when parity is not provided. The pooled variance formula assumes that both samples serve as estimators of a common variance parameter, so that pooling the samples provides a better estimate of that common variance. This premise is valid under the null hypothesis of parity, but when parity is not being provided (i.e., under the class of alternatives that we wish to test against), the variances may be very different. In such a case, pooling the variances diminishes the power of the test to detect disparity when the CLEC variance is much larger than the ILEC variance.

^{19/} See Mason, Robert L., Gunst, Richard F. & Hess, James L., Statistical Design and Analysis of Experiments 274, eq. 13.14a (John Wiley and Sons, 1989).

^{20/} Id. at 273, eq. 13.12.

What is needed, therefore, is a test statistic that assumes that variances are equal under the null hypothesis, but makes no such assumption under the class of alternatives which we are testing against (disparity). The "ILEC variance alone" technique proposed in the LCUG statistical white paper satisfies this requirement. The ILECs should not oppose this test because it maintains the proper Type I error rate (the probability of declaring disparity when parity is being provided). At the same time, its power to detect disparity is not diminished when the CLEC variance is much larger than the ILEC variance. In fact, it has a tendency to correctly identify this situation as a form of disparity.